

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 363 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements? No.
 2. To be referred to the Reporter or not? No. :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? No.
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.
 5. Whether it is to be circulated to the Civil Judge? : NO
No.

NAVALBHAI KALYANJI GOHEL THRO'P.O.A. DILIPKUMAR N GOHEL

Versus

VINODRAY DAMODAR MAVANI

Appearance:

MR RC KAKKAD for Petitioner

MR KS JHAVERI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 07/09/2000

ORAL JUDGEMENT

The petitioner - plaintiff filed Regular Civil
Suit No. 46/99 along with the application exh. 5 for
interim injunction and the lower court by the order dated
27-3-2000 rejected the said application exh. 5. Against
that order Civil Misc. Appeal No. 16/2000 was filed
before the District Court, Jamnagar along with the

application exh. 5 for interim injunction. The Assistant Judge, Jamnagar by the order dated 11-4-2000 has rejected the application exh. 5 filed in Civil Misc. Appeal No. 16/2000. Against the said order dated 11-4-2000 the present revision application has been filed before this Court and the interim relief granted by the trial Court was extended till 24-4-2000 and the same has been made continue by this Court also.

2. The lower appellate Court has observed in its aforesaid order that it was prima facie obvious that at the time of death of the petitioner's father, the petitioner was not living or residing in the suit premises along with his father and therefore he cannot claim cotenancy as per the provisions of Section 5 (ii) (c) of the Bombay Rent Act and the decree for possession has already been passed in favour of the respondent. During the execution proceedings, the petitioner raised objections and filed Regular Civil Suit No.46/99 on the same grounds. The trial Court rejected those objections on 27-3-2000 and observed that the suit was filed in the year 1983 and its fruits were ripen in the year 2000 i.e. after 17 years. Still however, the plaintiff petitioner without any right or authority of law has filed false and frivolous objections against execution of the possession warrant and hence the temporary objections may not be granted. It is also observed that even in the event of succeeding in the suit, the possession of the disputed property can be handed over to the plaintiff as per the provisions of Section 144 of the CPC and therefore the District Court has rejected the application exh. 5 filed in Civil Misc. Appeal No. 16/2000 and hence the lower appellate Court should not have continued interim relief which was granted by the trial Court. Even if it was continued then the appellate Court ought to have decided the appeal within specified period so that the appeal should not have become infructuous by rejecting the application exh. 5 filed in Civil Misc. Appeal No.16/2000. In the present case, the lower appellate Court had continued interim relief granted by the trial Court at the initial stage and this Court also permitted to continue interim relief granted by the appellate Court.

In the facts and circumstances of this case, it is just and proper to direct the lower appellate Court to decide the appeal pending before it within a stipulated period after affording a reasonable opportunity of hearing to the parties concerned.

Accordingly, the lower appellate Court is

directed to decide Civil Misc. Appeal No. 16/2000 pending before it in accordance with law within a period of three weeks from the date of receipt of writ of this Court or from the date of presentation of a certified copy of this order by either of the party whichever is earlier, after affording reasonable opportunity of hearing to the parties concerned. Till Civil Misc. Appeal No. 16/2000 is decided by the lower appellate Court, the petitioner shall not be dispossessed from the premises in dispute. The lower appellate Court shall decide the aforesaid appeal without being influenced by the order passed by this Court.

With the above observations and directions, this Revision Application is disposed of. Rule is discharged, with no order as to costs. Interim relief granted by the lower appellate Court and extended by this Court stands vacated.

-0-0-0-0-0-

/JVSatwaa/